

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

FILED-CLERK  
U.S. DISTRICT COURT

06 MAY 15 PM 2:06

TEXAS-EASTERN

SAMUEL EDUARDO CHAPA

§

BY \_\_\_\_\_

VS.

§

CIVIL ACTION NO. 4:06cv7

UNITED STATES OF AMERICA

§

MEMORANDUM ORDER OVERRULING MOVANT'S OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Movant Samuel Eduardo Chapa, an inmate confined at the Jim Wells Unit in Three Rivers, Texas, proceeding *pro se*, brought this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

The court referred this matter to the Honorable Don D. Bush, United States Magistrate Judge, at Sherman, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the motion be dismissed.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Movant filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the

objections in relation to the pleadings and the applicable law. See FED. R. CIV. P. 72(b).

After careful consideration, the court concludes Movant's objections should be overruled. As the magistrate judge found, Movant's claims pursuant to *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004); and *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005) are not cognizable in this proceeding because such cases do not apply retroactively on collateral review. See *In re Elwood*, 408 F.3d 211, 213 (5th Cir. 2005); *United States v. Gentry*, 432 F.3d 600, 605 (5th Cir. 2005). Further, Movant's claim of actual innocence is untimely and Movant's motion to vacate is absent any allegations warranting equitable tolling.

#### O R D E R

Accordingly, Movant's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the magistrate judge is **ADOPTED**. A final

judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED this 5<sup>th</sup> day of July, 2006.

A handwritten signature in black ink, appearing to read "Paul Brown", written over a horizontal line.

PAUL BROWN  
UNITED STATES DISTRICT JUDGE